

EXHIBIT 9-G

(SAMPLE) INTERLOCAL AGREEMENT (SUB-RECIPIENT AGREEMENT) *For A Project with A Water/Sewer District As Sub-recipient*

- Interlocal agreements related to CDBG projects need to be reviewed and approved by MDOC/CDBG prior to signing.
- The clauses required by HUD regulations (24 CFR 570.503) are noted with an asterisk (*). Copies of the HUD requirements are available upon request from the Department of Commerce, CDBG Program.
- See Exhibit 9-I for an example of an interlocal agreement (sub-recipient agreement) between a local government and a local non-profit organization that is a subrecipient of CDBG grant funds.

_____ COUNTY AND _____ WATER & SEWER DISTRICT INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into by _____ (County), herein referred to as "the County," and the _____ (NAME OF WATER & SEWER DISTRICT), herein referred to as "the District."

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Community Development Block Grant (CDBG) to pay assessments for low and moderate income families located within the boundaries of the _____ Water and Sewer Improvements Project (the "Project"), which assessments are for purposes of paying for _____ (DESCRIBE ACTIVITIES TO BE COMPLETED DURING THE PROJECT), facilities to be owned and operated by the District; and

WHEREAS, this Agreement between the County and the District will enable them to enhance cooperation in implementing the County's CDBG award to accomplish the Project; and

Interlocal Agreement Implementing
_____ County

Community Development Block Grant (CDBG) Program
Montana Department of Commerce

CDBG Contract # MT-CDBG-0_PF-_____
_____ Water and Sewer District

CDBG / NSP Administration Manual
2012

WHEREAS, the County, in its capacity as a CDBG grantee, has determined that the District can better supervise the design and construction of the facilities, as well as the collection and payment of assessments; and

WHEREAS, the Montana Department of Commerce ("MDOC"), pursuant to its CDBG contract with the County ("the CDBG Contract"), has required the County to enter into a agreement with the District specifying the terms and conditions of the County's delegation of certain CDBG responsibilities to the District; and

WHEREAS, both parties to this Agreement understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity.

NOW, THEREFORE, THE COUNTY AND THE DISTRICT MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the District

- A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the Project.
- B. The District will be responsible for all facets of the design and construction phases of the facilities, including but not limited to the following:
 - 1. Design engineering; including the development of design criteria, preparation of approvable plans and specifications and assistance with Project bidding and award;
 - 2. Construction engineering; including full-time resident construction inspection, Project close-out, preparation of an Operation & Maintenance manual, as-built drawings, and post-construction activities;

3. Except as provided by Section V (Administration), compliance with all applicable state and federal requirements contained in the Certifications for Application submitted to the MDOC with the County's application for CDBG assistance, dated May 26, 2006;
 4. Except as provided by Section V (Administration), compliance with all other state and federal requirements as described in the most recent version of the Montana CDBG Program Grant Administration Manual;
 5. Preparation of construction bid documents; and
 6. Supervision of the bid process, the awarding of construction contracts, and construction of the facilities. The selection of the Project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.
- C. The District and its consulting engineer will receive, review, approve and pay all requests for payment for the items contained in paragraph 1(B), above, and will prepare a summary of expenditures (Uniform Status of Funds Spreadsheet and Uniform Invoice Tracking Spreadsheet) to keep the County abreast of Project status.
- D. The District agrees to provide the MDOC, the United States Department of Housing and Urban Development, the Comptroller General of the United States, the Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine Agreement compliance. The District agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the County, the District, the State of Montana, or a third party, whichever is later. These records will be kept in the Grantee's offices in _____, Montana.

- E. The District will provide documentation that all non-County CDBG funds for the Project have been appropriated and allocated for use prior to the time of construction bid award.
- F. The District will withhold one percent (1%) of the amount of any claim submitted by the contractor (gross receipts) and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.

II. Payment of Design, Construction & Administrative Costs Incurred by the District

- A. Each payment for engineering and construction costs will be drawn from the District's _____(LIST FUNDING AGENCIES) grants, _____(LIST FUNDING AGENCIES) loan and local funds in amounts that are proportionate to the percentage that such funds represent of the total cost of the Project as specified in Attachment B (Project Budget) to this Agreement, herein specifically incorporated by this reference, and any modifications thereto approved by the MDOC and the County in accordance with the provisions of the CDBG Contract,. The County is not responsible for payments directly to the engineer or construction contractors.
- B. Administrative costs shall be paid as specified in Attachment B (Project Budget) and any modifications thereto approved by MDOC and the County in accordance with the provisions of the CDBG Contract.

III. Payment of LMI Assessments by the County

Upon receipt of valid documentation that an existing user of the District's water and wastewater facility qualifies as "Low to Moderate Income", the County shall request from the MDOC the required amount of CDBG funds to pay the total determined assessment for that user. The funds will be transferred to the District for repayment of a portion of the District's Loan.

IV. Duration of the Agreement

- A. This Agreement takes effect when the following conditions are satisfied:

1. The MDOC and County Board of Commissioners have executed the CDBG Contract;
 2. The MDOC has approved the County's "Request for Release of Funds and Certification";
 3. The _____ County attorney and the attorney for the District have approved this Agreement as to form and content; and
 4. The County Board of Commissioners and the District's governing body have each reviewed this Agreement and agreed fully to its terms and conditions.
- B. This Agreement will terminate when the MDOC approves final closeout of the CDBG Contract, unless terminated earlier in accordance with the terms of this Agreement.

V. Administration

- A. For purposes of implementing the joint undertaking established by this Agreement, the County's Board of Commissioners and the District's Board of Directors hereby agree that a representative of the _____ County Commission may attend the District's regularly scheduled board meetings (typically held on the first and third Monday of each month) and any other necessary meetings in order to assess Project status and funding status.
- B. The District will comply with all requirements applicable to subrecipient entities as set forth in the CDBG Contract, attached hereto and specifically incorporated herein by this reference.
- C. The District will carry out each activity under this Agreement in compliance with all federal laws and regulations described in 24 CFR Part 570.
- D. The District does not assume the County's environmental responsibilities described at 24 CFR Part 58, and

- E. The District does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- F. The County will monitor housing units and lots with LMI households served by the Project as of the time of execution of this Agreement to ensure that the landlord continues to rent the properties to LMI tenants and maintains HUD Fair Market Rents affordable to the tenants for a 5-year period, commencing with the signing of the LMI Owner/Renter/Landlord Agreement (the Agreement) and accompanying Notice of Security Interest in Real Property to Secure Repayment of a Wastewater and Water System Assessment Assistance Form (the Notice). Furthermore, the County will ensure that lot rents for assisted LMI households are maintained for a 5-year period commencing with the signing of the Agreement and accompanying Notice, unless the County approves rent increases to reflect legitimate cost increases to the owner, such as increased property tax or utility costs.
- G. The District shall comply with all terms and provisions of the Management Plan for the Project.

VI. Disposition of Real Property or Equipment Acquired

- A. The primary purpose of this Agreement is to define the procedures by which the County will disburse CDBG funds to pay the assessments incurred by LMI households within the Project area to pay for construction of the Project. The District's facilities will be constructed or improved as described in the CDBG Contract and the District or its assign will continue to own and operate those facilities subject to the limitations contained in subparagraph B of this Section.
- B. Upon the expiration of this Agreement, the District will transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. With respect to any real property or equipment under the District's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 the District will either:

1. use the property to meet one of the national objectives contained in 24 CFR section 570.901 for five years after expiration of the agreement (or for such longer period of time as is determined to be appropriate by the County) or;
2. dispose of the property in a manner that results in the County's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in subparagraph A of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income) and 24 CFR Parts 85.25 (Program Income), 85.31 (Real Property), and 85.32 (Equipment).

VII. Indemnification

The District waives any and all claims and recourse against the County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the District's performance of this Agreement except claims arising from the concurrent or sole negligence of the County or its officers, agents, or employees. The District will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the District's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the County or its officers, agents, or employees.

VIII. Suspension and Termination

In accordance with 24 CFR 85.43, the County may suspend or terminate this Agreement if the District materially fails to comply with any term of the County's CDBG grant agreement with the MDOC. In addition, either party may terminate this Agreement in accordance with 24 CFR 85.44.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Agreement.

_____ **WATER AND SEWER DISTRICT**

BY: _____ DATE: _____
[NAME, TITLE]

ATTEST

BY: _____ DATE: _____
[NAME/TITLE]

**BOARD OF COUNTY COMMISSIONERS, _____ COUNTY,
MONTANA**

BY: _____ DATE: _____
[NAME, TITLE]

ATTEST

BY: _____ DATE: _____
[NAME/TITLE]